TING CHUEN PENG & ORS v. YAP KIAM & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
S NANTHA BALAN JC
[ORIGINATING SUMMONS NO: 24NCVC-1150-07-2015]
21 AUGUST 2015

UNINCORPORATED ASSOCIATIONS: *Meetings – Extraordinary General Meeting (EGM) – Leadership crisis in association – Meeting to discuss about crisis before Registrar of Society de-registers association – Prohibit/restrain first defendant from applying for injunction or any other applications to restrain or frustrate EGM from being conducted – Application for – Whether plaintiffs' application made due to danger and threat of de-registration of association – Whether threat real and imminent – Constitution of association silent about removal or re-election of office bearers – Legal basis on which a term may be implied – Whether business efficacy test or officious bystander test applied – Whether first defendant's constitutional rights had been infringed – Whether element of public interest considered – Societies Act 1966, ss. 13(1), 16(1) & (2) – Foo Jong Peng v. Phua Kiah Mai*

CIVIL PROCEDURE: *Committal proceedings – Leave to commence – Application for – Leadership crisis in registered society – Whether plaintiffs circumvented previous court orders relating to issues addressed in present application – Whether ambiguity arose in court order – Whether grounds for committal specifically stated – Whether application allowed – Rules of Court 2012, O. 52 r. 3(1)*

The plaintiffs were the representatives of five State Members of the United Chinese School Committees' Association of Malaysia ('Dong Zong'). Dong Zong was registered as a society under the Societies Act 1966 ('the Act') and had worked with and co-operated with various organisations and associations to protect, promote and develop Chinese education in Malaysia. According to the plaintiffs, the primary purpose of filing this action *vide* an originating summons ('OS/encl. 1') was to obtain a protective order by way of a *quia timet* injunction so that the Extraordinary General Meeting ('EGM') of Ding Zong that was scheduled to be held on 23 August 2015 was not scuttled by any injunctive order ('prayer 1'). The plaintiffs relied on the ground that the first defendant ('D1') might obtain an injunction to restrain the holding of the EGM on the said date. The facts revealed that the last election of Dong Zong to elect a Central Committee ('CC') and the Central Executive Committee ('CEC') was held in 2013 and the office bearers of that election year would hold office for four years, *ie*, until 2017. In that election, D1 was elected as the chairman and Poh Chin Chuan ('Poh') was elected as the secretary general of Dong Zong. Disputes arose between D1 and Poh which resulted in leadership crisis. Whilst several legal actions were filed before the present action, there were two meetings of the Dong Zong which were scheduled to be held on 2 June 2015 and 23 August 2015. However, D1 obtained an *ad interim* injunction order dated 1 June 2015 *vide* originating summons no: 24-35-05-2015 ('OS35') to prevent the first meeting which was intended to

A be held on 2 June 2015 from taking place. It was also alleged that on 10 June 2015, Poh had convened a meeting whereby one Tan Tai Kim ('Tan') was appointed as the new chairman of Dong Zong. A new set of CC and/or CEC members were also appointed during the meeting. Dissatisfied, D1 obtained an *ad interim* injunction order dated 26 June 2015 *vide* originating summons B No: 24-44-06-2015 ('OS44') to restrain the relevant parties from implementing the decisions that were taken at the impugned meeting on 10 June 2015. As for the present OS, the plaintiffs asserted that due to the events that were unfolding within Dong Zong, the second defendant, Registrar of Society ('ROS') issued a notice under s. 16(1) of the Act for, C *inter alia*, Dong Zong to provide the ROS with a valid explanation in relation to the leadership crisis within a certain period of time failing which, the ROS would exercise its powers under ss. 13(1) and 16(2) to de-register Dong Zong. On 30 July 2015, D1 issued a letter to the ROS rendering a purported explanation as to the state of affairs of Dong Zong and requested for more time. Nevertheless, the ROS proceeded to issue a notice dated 6 August 2015 D under s. 13(2) of the Act which demanded an explanation as to why Dong Zong should not be de-registered. The plaintiffs filed encl. 5 for an injunction against D1. The said prayer in encl. 5 was subsequently merged with prayer 1 of the OS. On 31 July 2015, this court granted an *ex parte quia timet* injunction in favour of the plaintiffs and on 1 August 2015, the *ex parte* order E and the OS were served on D1. On 19 August 2015, D1 filed an application ('encl. 17') under O. 52 r. 3(1) of the Rules of Court 2012 for leave to commence committal proceedings against the plaintiff on the grounds, *inter alia*, that (i) the plaintiffs obtained the *ex parte* order dated 31 July 2015 with an intention to frustrate the existing orders, in particular, the order F dated 26 June 2015 which resulted in an abuse of the process of the court; and (ii) the plaintiffs were allegedly circumventing the orders dated 1 June 2015 and 26 June 2015 that was obtained by D1 in OS35 and OS44 respectively. Further, D1 argued that (a) the *ex parte* order granted was *ultra vires* and bad in law; (b) the plaintiffs were effectively the *alter ego* of G Poh; (c) the orders dated 1 June 2015 and 26 June 2015 had expressly restrained the nominees of the Poh faction from convening the EGM on 23 August 2015; (d) the solicitors/counsel representing the plaintiff were the same solicitors/counsel who represented Poh and his faction in other related proceedings, including OS 35 and OS44; (e) the conduct of the plaintiffs' solicitors was a flagrant breach of their duty as officers of the court and had H misled this court in the granting of the *ex parte* order; and (e) the ROS notice dated 6 August 2015 could not be relied upon by the plaintiffs since the OS was filed based on the notice dated 30 July 2015. By consent, the action against the ROS was struck off with no order as to costs.

I **Held (allowing encls. 1 and 5; dismissing encl. 17):**

(1) The ROS notice dated 6 August 2015 was a statutory show cause notice and carries with it grave implications. Dong Zong may face consequences which are enormous and the loss and damages may be

permanent, intangible and irreparable. A failure on the part of Dong Zong to comply with the notice issued under s. 16(1) would lead to its de-registration pursuant to the exercise of powers by the ROS under ss. 16(2) and 13(1) of the Act. The ROS action was the sole reason for the action taken by the plaintiffs in requisitioning for the EGM and filing the OS and obtaining the *ex parte* order. In the circumstances, the danger and threat of de-registration of Dong Zong was therefore real and imminent. (paras 24, 25, 76 & 82)

(2) The Rules under the Dong Zong's Constitution dealt with the powers of the CEC and CC to resolve any dispute. However, the Rules of Dong Zong did not mention about expulsion or removal or re-election in the event of a change in circumstances, as happened in this case. Obviously, the framers of the Rules did not expect or anticipate that there would be such a leadership crisis as would necessitate provisions to cater for such an eventuality. As such, there was clearly a gap or *lacuna* in the Rules. (paras 29, 31, 88 & 89)

(3) In so far as the order dated 26 June 2015 is concerned, it was clearly targeted at the impugned CC meeting held on 10 June 2015. It was not restraining anyone from requisitioning and holding an EGM, particularly an EGM which had been precipitated by the ROS actions. As for the order dated 1 June 2015, if the present plaintiffs were considered to be agents of the defendants in OS44, then they should be hauled up before the trial judge if it was proven that there had been a breach in the order. (paras 74 & 75)

(4) The O. 52 statement under the Rules of Court 2012 did not specifically state that the plaintiffs were the agents or *alter ego* of the defendants in OS44. Given the fact that committal is a *quasi*-criminal proceeding and the grounds must be specifically stated in the O. 52 statement itself, the submission that the plaintiffs were the agents of the defendants in OS44 could not be asserted or relied upon for purposes of the O. 52 application (*Lee Lay Ying v. Goh Kim Nam & Anor*; refd). (para 77)

(5) There was at the very least some ambiguity in the order dated 1 June 2015 as to whether all state committees were restrained from requisitioning an EGM to resolve the leadership crisis and/or whether the order was intended as a blanket embargo to prevent any EGM to resolve the leadership crisis of Dong Zong, regardless of any change in the circumstances such as the ROS actions which may lead to its de-registration. It is trite that if there is any ambiguity in an order which was being enforced by committal, then such ambiguity will be construed in favour of the putative contemnors. In the circumstances, the O. 52 application did not pass the requisite threshold and was accordingly dismissed. No order as to costs was made since it was an *ex parte* application (*Bee Ah Nya v. Ooi Ah Yan*; refd). (paras 78 & 79)

(6) The plaintiff's explanation that they used the same set of solicitors since they knew the history of the litigation and would be able to readily and expeditiously file the requisite papers was sensible and practicable. The explanation rendered by the plaintiffs as to their independence or neutrality was not implausible or improbable and not sinister in any sense. There was also no evidence before the court that the plaintiffs were the agents or *alter ego* of the Poh faction. Further, if D1 was serious about attacking the plaintiffs as to their avowed neutrality, then there should have been an application to cross-examine the deponent of the plaintiffs' affidavits. However, this was not done. (paras 85-87)

(7) The legal basis on which a term may be implied into the Rules or constitution of a society is no different from the test that is applicable when considering whether a term should be implied to an ordinary contract. The test for implying a term was the business efficacy test and the officious bystander test. After all, the relationship between a society and its members was contractual in nature. Thus, the Rules or constitution or by-laws constitute the contract and these were to be construed in accordance with the laws of contract. (para 94)

(8) It is entirely consonant with business efficacy to imply a term in the Rules of Dong Zong that the supreme body, *ie*, the EGM may deal with and resolve the leadership crisis by conducting a re-election of the committee members which as a collective body, would in turn appoint the office bearers of the Dong Zong. Based on the present circumstances, the affairs and operations and the very existence of the Dong Zong will not just be compromised but will be obliterated, if a term was not implied. A term may also be implied on the basis of the officious bystander test as the members of Dong Zong, if asked, would undoubtedly agree that there should be such a term to allow the EGM to resolve the leadership crisis (*Foo Jong Peng v. Phua Kiah Mai*; refd). (paras 95 & 96)

(9) Whatever may have been the implication of the *ex parte* order to D1, it was entirely open to him to have set it aside immediately after service of the order on him on 1 August 2015. However, D1 took no steps to set aside the *ex parte* order and instead, proceeded to file an affidavit in response to the OS and the injunction. D1 only filed the application for leave under O. 52 of the Rules of Court 2012 on 19 August 2015. If D1 truly felt that his constitutional rights had been infringed, then the surest thing to do would have been to set aside the *ex parte* order which he claimed was a fetter on his constitutional rights. Further, D1 did not file any counterclaim in the OS which he could have done, but chose not to do so (*RIH Services (M) Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd*; foll). (para 101)

(10) There was no basis for the complaint that the plaintiffs were guilty of subterfuge. They obtained a *quia timet* injunction on an *ex parte* basis which was the only way to do it. Given D1's propensity to injunct meetings, whether rightly or wrongly, the plaintiffs herein could not be faulted for proceeding on an *ex parte* basis. In any event, once the *ex parte* order was served, D1 could have taken immediate steps to set it aside so that he could make whatever application he wanted to injunct the EGM which was to be held on 23 August 2015. (para 102)

(11) The plaintiffs had valid reasons not to move the court in OS44 as they would have had to intervene and made themselves as parties, in circumstances where their complaint or cause of action had no relation to the cause of action subsisting in OS44. Hence, the plaintiffs may have failed in their attempt at seeking immediate remedy in that court. Further, if they intervened, then a *quia timet* on an *ex parte* basis would have been a distinct impossibility as events would have overtaken the plaintiffs. The fact that Poh and/or others who were parties in OS35 and/or OS44 could have taken steps in both proceedings was not a bar to the plaintiffs taking action by way of the instant OS. (paras 104 & 106)

(12) The OS was predicated on a set of circumstances to support a *quia timet* injunction and the ROS notice dated 6 August 2015 was part of the continuing process of the steps that were taken by the ROS under the Act. The ROS notice dated 6 August 2015 was germane to the OS *albeit* that it came after the OS was filed. It was clear that D1 was vehemently opposed to the holding of the EGM on 23 August 2015. If the orders sought in the OS and encl. 5 were not granted, then it was a virtual certainty that the EGM would be scuttled through an injunctive order that D1 may obtain. By the time the injunction was set aside, it would be too late as the damage would have been done by then and Dong Zong could not be resurrected. The first casualty would be those students who were due to sit for the United Chinese Independent Secondary School Examination (UEC), an exam which was annually conducted by Dong Zong in October of each year. They will be innocent victims of the internal tussle within Dong Zong. Further, there was a public interest element to these proceedings in the form of the UEC. In the circumstances, the threat of damage to Dong Zong was therefore real, substantial and imminent and warrants the grant of a *quia timet* injunction as a perpetual relief. (paras 107-109)

Case(s) referred to:

Attorney General of Belize v. Belize Telecom Ltd [2009] 2 All ER 1127; [2009] 1 WLR 1988; [2009] UKPC 10 ***(refd)***

Bee Ah Nya v. Ooi Ah Yan [2014] 6 CLJ 991 HC ***(refd)***

Cheah Phee Guan v. Persatuan Sek Tong Cheah Si Seh Tek Tong Hock Haw Kong Kongsi - Penang High Court OS 24NCVC-1190-10/2013 (Unreported) ***(refd)***

Foo Jong Peng v. Phua Kiah Mai [2012] SGCA 55 ***(refd)***

Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 CA ***(refd)***

A *Lee Lay Ling v. Goh Kim Nam & Anor [2013] 1 LNS 1000 HC* ***(refd)***
Majlis Peguam Malaysia & Ors v. Raja Segaran Krishnan & Other Appeals [2004] 4 CLJ 239 CA ***(refd)***
Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd [2007] 3 CLJ 295 CA ***(refd)***
PPES Resorts Sdn Bhd v. Keruntum Sdn Bhd [1990] 1 CLJ 528 HC ***(refd)***
RIH Services (M) Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd [2002] 3 CLJ 83 CA ***(foll)***
B *Yap Kian v. Poh Chin Chuan & Ors [2015] 1 LNS 456 HC* ***(refd)***

Legislation referred to:
Federal Constitution, art. 5
Rules of Court 2012, O. 29 r. 1(2), (2A), (2C), O. 52 r. 3(1)
Societies Act 1966, ss. 13(1), (2), 16(1), (2), 18

C *For the plaintiffs - Justin Voon, KF Wong, Kho Zhen Qi & HS Lim; M/s KF Wong & Lee*
For the 1st defendant - Harpal Singh Grewal, Firoz Hussein Ahmad Jamaluddin, Frida Krishnan, Reny Rao, Julian Chan & Muhammad Asmirul Ashraff Fadhli; M/s The Chambers of Frida
D *For the 2nd defendant - Khairul Fazly Kamaruddin; SFC*

Reported by Kumitha Abd Majid

JUDGMENT

E **S Nantha Balan J:**

Introduction

[1] This case arises out of the protracted and acrimonious leadership tussle within the United Chinese School Committees' Association of Malaysia which has received wide media publicity. The Chinese Community
F in Malaysia refer to this association as the "Dong Zong".

[2] I shall also refer to the association as the Dong Zong. The Dong Zong was established in 1954. Apparently, since its formation in 1954, this is the first time that the Dong Zong is facing a leadership crisis.

G **[3]** Dong Zong is registered as a society under the Societies Act 1966 ("the Act"). The Act is enforced through the Registrar of Societies ("the ROS"). Under the Act, various powers, duties and functions have been conferred on the ROS. This includes the draconian power to de-register a society. The on-going leadership tussle and the much publicised battle
H between the factions within the Dong Zong has led to action being taken by the ROS, with a real risk that if the stalemate is not resolved, Dong Zong may be de-registered.

[4] The plaintiffs are the representatives of five State Members of the Dong Zong who had requisitioned for an Extra-ordinary General Meeting
I ("EGM") to be convened. They represent the member states of Negeri Sembilan, Sarawak, Penang and Province Wellesley, Perak and Pahang. The agenda for the EGM is intended to resolve the leadership crisis.

The Originating Summons

[5] The primary purpose of the plaintiffs in filing the originating summons ("the OS") is to obtain a protective order by way of a "*quia timet*" injunction so that the EGM which is scheduled to be held on 23 August 2015 is not scuttled by any injunctive order. In this regard, the plaintiffs moved this court for a *quia timet* injunction as they have a real fear that the first defendant ("Dl") may, as he has in the past, obtain an injunction to restrain the holding of the EGM which is scheduled to be held on Sunday 23 August 2015.

[6] The purpose of the EGM was to solve the leadership crisis by conducting a re-election of committee members. The agenda for the EGM is as follows:

(1) To solve Dong Zong's leadership crisis, all membership of Dong Zong under Clause 5.2 (5.2.1 till 5.2.4) of the Constitution (for Central Committee) and Clause 5.3 (5.3.1) of the Constitution (for Central Executive Committee) be re-elected according to the will of the majority vote of Dong Zong's State members; and

(2) Relevant and/or consequential resolutions be given to give effect to the (1) above including but not limited to dissolution and/or replacement and/or re-election of any members and/or Committees under (1) and to solve Dong Zong's leadership crisis.

[7] According to the plaintiffs, the EGM is to facilitate a re-election to be carried out so that Central Committee ("CC") members may be elected afresh and for a fresh Central Executive Committee ("CEC") to be elected by the CC. By this route it is hoped by the plaintiffs, as the protagonists of the EGM, that the Dong Zong leadership tussle would be resolved. The plaintiffs maintain that once the leadership tussle is resolved, there will be no risk of de-registration by the ROS and the image and standing of the Dong Zong will be reinstated in the eyes of the community. Also, a resolution of the leadership tussle would ensure that the examination for the United Examination Certificate ("DEC") which is conducted annually by the Dong Zong in October of each year, will be carried out without any interruption or impediment. The UEC is apparently recognised as an entry qualification for various tertiary institutions worldwide. Presently, the leadership tussle has put the UEC in jeopardy as the management of Dong Zong is somewhat in suspended animation.

[8] On 21 August 2015, three applications came up before me namely, encl. 1 (the OS), encl. 5 (plaintiffs' application for an injunction against D1) and encl. 17 (Dl's application for leave for committal against the plaintiffs). My oral decision in respect of all three enclosures was delivered on 21 August 2015. After hearing submissions by counsel for D1 and the submissions made by counsel for the putative alleged contemnors (the plaintiffs), I dismissed the application for leave for committal against the plaintiffs with no order as to costs.

[9] As for the OS, I allowed prayer 1 of the OS and the prayer for injunction in encl. 5 (which had merged with prayer 1 of the OS). I also ordered D1 to pay costs of RM10,000 to the plaintiffs. Counsel for the plaintiffs had abandoned prayers 2 and 3 of the OS. Also, by consent, the action as against the second defendant (ROS) was struck off with no order as to costs. These are now my written grounds in respect of the decisions for all three applications.

History of Dong Zong

[10] At the outset, it is I think, important to have an understanding of the history and the origins of the Dong Zong and the resultant contributions that it has made to the Chinese community in Malaysia principally in terms of the promotion and development of Chinese education. The history of the Dong Zong has been set out in the affidavits filed by the parties and is not a matter of dispute.

[11] The appropriate starting point is the objects of the Dong Zong which are as stated in r. 4 of Dong Zong's Constitution (hereinafter referred to as "the Constitution"). It reads as follows:

> RULE 4 – OBJECTS
>
> The objects of the Association shall be:
>
> 4.1 To unite the members and to **promote and develop the cause of Chinese education in Malaysia**;
>
> 4.2 **To discuss, promote and manage jointly the affairs pertaining to the development and amelioration of the Chinese Schools** in Malaysia/State, including the curricula, **examinations, teacher training, education funds and other related matters**;
>
> 4.3 To **strengthen and consolidate the relationship among the Chinese School Committees** in Malaysia;
>
> 4.4 To **unite and consolidate the strength of the Chinese Community in Malaysia in seeking to improve Chinese schools and promote the cause of Chinese education**;
>
> 4.5 To **represent the Chinese School Committee Associations in Malaysia in negotiating with Government on all matters in respect of the Chinese schools**;
>
> 4.6 To seek the co-operation between the school committee members and the teachers in Malaysia;
>
> 4.7 To foster harmony and unity among different ethnic groups;
>
> 4.8 To purchase, take on lease or tenancy or in exchange, hire or otherwise acquire any movable or immovable property, which may be deemed necessary, convenient for any of the purpose by the Association; and

4.9 To sell, manage, lease, charge, dispose of, or otherwise deal with all or any part of the property of The Association.

(emphasis added)

[12] Thus, it can be seen quite clearly that the "*raison d'etre*" of the Dong Zong is the promotion and development of Chinese education in Malaysia. It would therefore be fair to say that the Dong Zong is synonymous with Chinese education in Malaysia. Hence, for historical and societal reasons the Dong Zong are (or at least they should be regarded as) the main voice of the Chinese community in terms of discussions or negotiations with the Government of Malaysia in respect of all matters/issues relating to Chinese schools and Chinese education in Malaysia.

[13] In this regard, according to the plaintiffs, the Dong Zong has over the years, worked with and co-operated with "United Chinese School Teachers' Associations of Malaysia" (hereinafter referred to as "Jiao Zong") and other organisations and associations to protect, promote and develop Chinese education in Malaysia. According to the evidence, as a result of the past close relationship and cooperation between Dong Zong and Jiao Zong, the Chinese community tend to refer to both organisations collectively as "Dong Jiao Zong". Many within the Chinese community regard them as being one organisation. The manifestation of the close cooperation between Dong Zong and Jiao Zong is evidenced by the following events:

(a) In the 1970s, Dong Zong and Jiao Zong jointly established the "Malaysian Independent Chinese Secondary Schools Working Committee" (hereinafter referred to as "MICSSWC") to protect, promote and develop Chinese independent secondary schools in Malaysia including, among others, conducting annual examinations "United Independent Chinese Secondary School examination" or "United Chinese Independent Secondary School Examination" ("the UEC Examination") and issuing certificates for the UEC Examination.

(b) According to the plaintiffs the UEC examination is recognised by more than 800 universities and higher education institutions worldwide.

(c) In 1969, the leading Chinese education activists in Dong Zong, Jiao Zong and other organisations have promoted and incorporated, a non-profit company, named Merdeka University Bhd ("MU Bhd") with the objectives, *inter alia*, to protect and develop Chinese higher education and to establish and operate a Chinese University. However, MU Berhad was unable to realise its objective of establishing such a university.

(d) In 1994, Dong Zong, Jiao Zong, MU Bhd and a few Chinese education activists had set up "Dong Jiao Zong Higher Learning Centre Sdn Bhd" with its objectives, among others, to set up, run and develop the Chinese Higher Education. At present, the Dong Jiao Zong Higher Learning Centre Sdn Bhd operates and manages a college, ie, the "New Era College" which is duly registered under the Ministry of Education of Malaysia ("New Era College").

(e) In 1994, Dong Zong and Jiao Zong had established "Dong Jiao Zong Chinese Primary School Working Committee" to unite them to further protect, promote and develop Chinese primary schools in Malaysia.

(f) Dong Zong, Jiao Zong, Kuala Lumpur and Selangor Chinese Assembly Hall and 11 more jointly drafted and presented a memorandum of appeal of the Chinese society in 1999.

(g) In the subsequent years, Dong Zong and Jiao Zong continued to work together and cooperate with each other.

[14] Continuing with the history of the Dong Zong, the plaintiffs maintain that since its incorporation, Dong Zong has been working closely and in cooperation with not only Jiao Zong but also alumni associations, parents-teachers associations, educational and cultural organisations, communities and associations and other fellowship organisations to protect, promote and develop primary, secondary and higher education in Malaysia. Besides Jiao Zong, the other fellowship organisations of Dong Zong are:

(a) Gabungan Pertubuhan Cina Malaysia;

(b) Dewan Perhimpunan China Kuala Lumpur & Selangor;

(c) Persekutuan Persatuan-Persatuan Alumni Sekolah Cina Malaysia;

(d) Gabungan Persatuan Alumni Universiti Taiwan Malaysia;

(e) Nanyang University Alumni Association of Malaysia;

(f) LLG Cultural Development Centre Bhd;

(g) The Association of Graduates From Universities & Colleges of China, Malaysia;

(h) MU Bhd;

(i) Kesatuan Kebangsaan Guru-Guru Besar Malaysia;

(j) Malaysia Seven Major Clans Association; and

(k) Centre for Malaysia Chinese Studies.

[15] Hence, it is an incontrovertible fact that since the time of its establishment, Dong Zong together with Jiao Zong have been at the forefront in terms of protecting and promoting Chinese education in Malaysia and they are respected, reputable and leading organisations in the Chinese community in Malaysia.

The Leadership Tussle

[16] However, dark and ominous clouds of chaos and uncertainty have descended upon Dong Zong in recent times. For some time now, there has been a serious leadership tussle within the Dong Zong. It is fair to describe the situation that exists within the Dong Zong as a "serious and deep-rooted leadership crisis". Counsel for the plaintiffs has (not unfairly) described the

current state of affairs as an "emergency situation" and even has gone to the extent of invoking the doctrine of necessity to seek the appropriate remedy in the present proceedings so as to save the Dong Zong from de-registration. According to the plaintiffs, the leadership crisis has had a crippling effect on the Dong Zong and placed the UEC Examination which is traditionally held in the month of October of each year, in jeopardy.

[17] Apparently, the leadership crisis has also caused much confusion and consternation amongst the Chinese community in Malaysia. The leadership disputes have also led to a physical stand-offs between the parties and police reports have been lodged by the parties concerned.

Dong Zong Elections

[18] The Dong Zong's elections are held once every four years. The Dong Zong's membership is made up of State Chinese School Committee Associations or State Chinese School Committees and Teachers Associations and there shall be one member for each State. (r. 3.1 of the Dong Zong's Rules). During an election, the members shall elect a Central Committee ("CC") and the CC shall in turn elect the office bearers who shall constitute the Central Executive Committee ("CEC"). The election of office bearers is covered by r. 5.2.3 of the Rules and it provides as follows:

> 5.2.3. The Central Committee Members shall within fourteen (14) days after the Annual General Meeting of the election year, elect among themselves the following:
>
> (a) One (1) Chairman;
>
> (b) One (1) Deputy Chairman;
>
> (c) Five (5) Vice Chairman. The office of one (1) Vice Chairman is reserved for the state members of Sarawak and Sabah who shall assume office in rotation; whereas the office of other four (4) Vice-Chairman shall be reserved for the eleven (11) state members in West Malaysia to be contested in the election;
>
> (d) One (1) Secretary-General;
>
> (e) Two (2) Assistant Secretary-General;
>
> (f) One (1) Treasurer; and
>
> (g) One (1) Assistant Treasurer.

[19] The last election of the Dong Zong to elect CC and CEC/Office bearers was held in 2013 and the office bearers of that election year will hold office for four years, ie, until 2017. In that election, D1 was elected as the Chairman and Poh Chin Chuan ("Poh") as the Secretary General of the Dong Zong. Poh and D1 are at loggerheads with each other. Poh is not a party to the present OS, although D1 maintains that the plaintiffs are actually Poh's agents or nominees or proxies. At any rate, regardless of Dl's allegations and the rebuttals by the plaintiffs, there are at least two groupings or factions within the Dong Zong. One faction supports D1 and the other grouping

supports Poh. The present plaintiffs however, maintain that they are independent and are not aligned to either faction. The present plaintiffs are not parties in any of the previous legal actions which had been filed by D1 or Poh.

[20] The Dong Zong leadership crisis has rather regrettably, spawned a cluster of legal actions and these were filed by the rival sides to the dispute. The legal actions that precede the present OS are as follows:

(i) Kuala Lumpur High Court
Originating Summons No. 24NCVC-87-01/2015
Yap Kiam @ Yap Sin Tian v. Poh Chin Chuan & 17 Others (hereinafter referred to as "OS 87")

(ii) Kuala Lumpur High Court
Originating Summons No. 24-35-05/2015
Yap Kiam @ Yap Sin Tian v. Poh Chin Chuan & 9 Others (hereinafter referred to as "OS 35")

(iii) Kuala Lumpur High Court
Originating Summons No. 24-40-06/2015
Poh Chin Chuan & 17 Others v. Yap Kiam @ Yap Sin Tian (hereinafter referred to as "OS 40")

(iv) Kuala Lumpur High Court
Originating Summons No. 24-44-06/2015
Yap Kiam @ Yap Sin Tian & 4 Others v. Poh Chin Chuan & l6 Others (hereinafter referred to as "OS 44")

[21] Whilst the legal actions were ongoing, there were two meetings of the Dong Zong which had been initiated by parties who are antagonistic to D1. The first meeting is an EGM which was intended to be held on 2 June 2015. The EGM was pre-empted as D1 obtained an ad interim injunction order dated 1 June 2015 in OS35 to prevent this meeting from being held. The significance of this EGM is that it was initiated by the Poh faction and the agenda for that EGM is in substance, the same as the agenda for the EGM that is scheduled to be held on 23 August 2015. In this regard, counsel for the plaintiffs said that whilst the agenda in both EGM may be substantially similar, the situation and circumstances pertaining to the EGM scheduled to be held on 2 June 2015 is vastly different from the dire situation that has necessitated the EGM which is scheduled to be held on 23 August 2015. The dire situation alluded to here is the prospect of de-registration and the possible cancellation/disruption of the UEC. The next meeting is the Annual General Meeting ("AGM") which was intended to be held on 27 June 2015. D1 obtained an ad interim injunction order dated 26 June 2015 in OS 44 to restrain the AGM from being held.

[22] Whilst the legal actions as aforestated were afoot, it is alleged that on 10 June 2015, Poh had convened a meeting whereby one Tan Tai Kim ("Tan") who is obviously aligned to him, was appointed as the new

Chairman of the Dong Zong. I shall refer to Tan and Poh as "the Tan/Poh faction". Apparently, at that meeting a set of new Central Committee and/or Central Executive Committee members were also appointed. D1 maintains that Tan's so called election was unlawful and that he (D1) is still the lawful Chairman of the Dong Zong. He therefore does not recognise the appointment of Tan or the new Central Committee and/or Central Executive Committee members. To that end, D1 obtained an ad interim injunction order dated 26 June 2015 in OS 44 to restrain the relevant parties from implementing the decisions that were taken at the impugned meeting of 10 June 2015. I will come back to the order dated 26 June 2015 which was granted in OS44.

[23] In the meanwhile, the tumultuous events that were unfolding within the Dong Zong, including the physical standoffs, the emergence of not one but two Chairpersons for Dong Zong, the disputed election of CCs and CECs on 10 June 2015, the adverse media publicity and the legal actions and the various injunctions orders etc, did not escape the attention of the ROS who eventually proceeded to exercise his powers and issued a notice under s. 16(1) of the Act ("the s. 16(1) notice"). The s. 16(1) notice was dated 30 June 2015 and was received by the Dong Zong on 2 July 2015. It reads (in Bahasa Malaysia) as follows:

> Bahawasanya saya berpendapat satu pertikaian telah berlaku sesama pemegang-pemegang jawatan pertubuhan yang namanya tersebut di atas dan saya tidak berpuas hati tentang identiti pemegang-pemegang jawatan yang sebenar yang telah dilantik bagi pertubuhan itu.
>
> AMBIL PERHATIAN saya dengan ini memberi notis satu bulan daripada tarikh penyampaian notis ini supaya tuan kemukakan keterangan penyelesaian pertikaian yang tersebut itu dan mengenai pelantikan sah di sisi undang-undang pemegang-pemegang jawatan pertubuhan tuan atau kemukakan langkah-langkah prosiding tindakan bagi tujuan penyelesaian pertikaian berkenaan.

[24] It is clear that a failure on the part of the Dong Zong to comply with the s. 16(1) notice would lead to its de-registration pursuant to the exercise of powers by the ROS under s. 16(2) and s. 13(1) of the Act. The relevant provisions of the Act which are germane to the instant OS are s. 16(1), (2) and s. 13(1), (2) of the Act and they read as follows:

> Section 16(1) and (2)
>
> 16. Disputes
>
> (1) If the Registrar is of the opinion that a dispute has occurred among the members or office-bearers 'of a registered society as a result of which the Registrar is not satisfied of the identity of the persons who have been properly constituted as office-bearers of the society, the Registrar may serve notice on the society requiring the society, within one month of the service of such notice, to produce to him evidence of the settlement of

A any such dispute and of the proper appointment of the lawful office-bearers of the society or of the institution of proceedings for the settlement of such dispute.

(2) If any such notice as is provided in subsection (1) is not complied with to the satisfaction of the Registrar within the period of one month or any
B extension thereof allowed by the Registrar, the Registrar may take steps to cancel the registration of the society under section 13.

Section 13 of the Act

13. Cancellation and suspension

C (1) Subject to subsection (2), the Registrar may, in the following cases, cancel the registration of any society registered under section 7:

...

(c) if the Registrar is satisfied:

D ...

(ix) that the society has failed to comply with the notice served by him under subsection 16(1); and

...

(2) Where the Registrar proposes to cancel the registration of any
E registered society under paragraph (1)(c) the Registrar:

(a) shall notify one or more of the office-bearers of the society of his intention to cancel the registration of the society; and

(a) shall give him or them an opportunity to submit reasons in writing within thirty days from the date of the notification why the
F registration should not be cancelled.

[25] The s. 16(1) notice is clearly and indisputably a statutory prelude to the de-registration of the Dong Zong. Indeed s. 16(2) of the Act stipulates that if the s. 16(1) notice is not complied with, then the ROS is at liberty to take
G action under s. 13(1) of the Act to de-register the Dong Zong. The danger and threat of de-registration is therefore real and imminent.

[26] As such, the situation has become dire and the plaintiffs therefore made a requisition for an EGM pursuant to r. 6.2.2 of the Rules of the Dong Zong. According to the plaintiffs, going by the history and conduct of the
H parties particularly that of D1, any meetings intended to be held by Poh/Tan will be injuncted by injunction application by Yap and *vice versa*. Therefore, it is alleged that there is presently severe and utter confusion, where it appears that there are two chairman and new committee members for Dong Zong and the plaintiffs claim that they really do not know who is the valid
I chairman and/or valid central committee and/or central executive committee members. The plaintiffs therefore contend that Dong Zong is facing very severe problems and the dispute between the factions under D1 and the Poh/Tan faction has caused loss of public confidence in Dong Zong and has also affected Dong Zong's image.

[27] The plaintiffs also contend that the UEC which will be held in October 2015 will also be jeopardised if these disputes are allowed to continue. Quite apart from all of the above factors and/or considerations, the actions that have been taken and that may possibly be taken by the ROS are also ominous and may spell the demise of the Dong Zong. The damage or injury to Dong Zong is therefore imminent and substantial. It may also be irreparable. On that analysis, it was contended for the plaintiffs that the current applications by way of the OS (encl. 1) and application for an injunction (encl. 5) have satisfied the legal threshold and pre-requisites for the grant of a *quia timet* injunction in the form as prayed for in both these applications. Based on the conduct of previous conduct of the parties, the plaintiffs believe that the Poh/Tan faction are not the parties who are likely to prevent any EGM/AGM from being held and that any legal obstacles to the holding of the EGM on 23 August 2015 will likely come from D1 as the purported or disputed Chairman of Dong Zong.

[28] As such, the plaintiffs state that the issues as aforementioned which have gripped and crippled the Dong Zong ought to be resolved at the EGM which according to r. 5.1.1. of the Dong Zong's Constitution, is the "supreme authority". Rule 5.1.1. reads as follows:

> 5.1.1 The General meeting which comprises of the Annual General Meeting and the Extraordinary General Meeting and the Extraordinary General Meeting shall be the supreme authority of the Association;

[29] For completeness, I should add that the Constitution of the Dong Zong makes no provision for expulsion or removal of any Central Committee Member or Central Executive Committee member or any office bearer. As I stated earlier, there has never been a leadership crisis within Dong Zong since it was established in 1954 and this may well be due the fact that such a crisis or the need for re-election of Central Committee members or Central Executive Committee Members or office-bearers in between the election years was probably never within the contemplation of the framers of the Dong Zong Rules.

[30] For the plaintiffs' part it was submitted that the absence of any express rules allowing for such re-election is not fatal and that such a rule can be implied in the circumstances. Also, reliance was placed on the fact that the EGM is the "supreme authority" of Dong Zong and that the current crisis is best resolved through an EGM. In this regard, parties did also touch on r. 9.3 of the Dong Zong Constitution. It reads as follows:

> Rule 9.3
>
> In between the Annual General Meetings. If the provision of the constitution is silent or there is any dispute, the Central Executive Committee shall discuss and resolve the matter. Its decision shall be validated by the approval of the Central Committee.

[31] In my view, that Rule deals with the power of the CEC and CC to resolve any dispute but it is not wide enough to allow for the CEC/CC to deal with a leadership crisis of the type that is bedevilling the Dong Zong. As such, on 29 July 2015, the plaintiffs filed the OS principally to prevent D1 from taking any legal action to scuttle the EGM. By way of encl. 5, the plaintiffs sought a *quia timet* injunction to restrain D1 from commencing any legal action to injunct the EGM.

The Originating Summons

[32] The prayers sought in the OS are follows:

(i) D1 and/or his agents and/or his nominees and/or members of the Central Committee and/or members of the Central Executive Committee which are represented by him and/or parties instructed and/or employed by him are restrained from commencing and/or filing and/or pursuing any court action and/or court proceedings including but not limited to application for any injunction and/or interim injunction and/or ad interim injunction and/or other applications in any way to affect, prejudice, stop, restrain and/or frustrate the Extraordinary General Meeting of the Society known as United Chinese School Committees' Association of Malaysia (hereinafter referred to as "Dong Zong") which intended to be held on 23 August 2015 and/or any such other postponed date (hereinafter referred to as "the EGM Meeting") *vide* the requisition dated 28 July 2015 and the notice for the EGM Meeting dated 29 July 2015;

(ii) that the second defendant is restrained from any actions to dissolve Dong Zong pending completion of the EGM Meeting to attempt to resolve the leadership crisis of Dong Zong;

(iii) if required, a declaration that the EGM Meeting is valid and any resolutions given in the EGM Meeting regarding the membership and/or election of members of Dong Zong are binding and shall be adhered to by all of its members and all the parties relevant to Dong Zong and/or dealing with Dong Zong including but not limited to the defendants;

(iv) costs of this application be paid by the first defendant and/or any other parties deemed fit by the court to the plaintiffs and/or pursuant to the order of the court; and

(v) other reliefs for the plaintiffs and/or for the benefit of Dong Zong deemed fit by this Honourable Court.

Grounds For The OS

[33] The plaintiffs' grounds for the OS and the injunction may be briefly stated as follows:

(a) Dong Zong is facing a very serious leadership crisis for a long time and there are various court actions taken that appears to be unable to solve this problem until today.

(b) A notice under s. 16(1) of the Societies Act 1966 dated 30 June 2015 has been issued by the second defendant and received by Dong Zong on 2 July 2015.

(c) The notice by the Registrar of Societies has led this issue of leadership crisis of Dong Zong became (*sic*) very urgent as under *inter alia* s. 16(2) of the Societies Act 1966, if the said notice is not complied with by Dong Zong within one month, the Registrar may take steps to strike out Dong Zong's registration.

(d) The notice by the Registrar of Societies shows that this leadership crisis ought to and is best resolved in the hands of the most basic core members of Dong Zong, ie, by calling the EGM meeting of all 13 State Members of Dong Zong to consider and review the membership of Dong Zong and to ultimately resolve this crisis in order to save Dong Zong from the danger of dissolution and from any other further injury of reputation and image. Any parties concerned in Dong Zong should respect and comply with the will of the majority of State Members which are the most basic core members of Dong Zong and the EGM is the "Supreme Authority" of Dong Zong according to cl. 5.1.1. of Dong Zong's Constitution.

(e) Therefore, a requisition dated 28 July 2015 has been made by the plaintiffs representing the five State Members of Dong Zong for the EGM Meeting be held and a notice for meeting dated 29 July 2015 also has been issued for the EGM Meeting.

(f) Therefore, the protection of the court order herein is urgently needed for the EGM Meeting be held and not to be rendered nugatory by further court action to attempt to restrain and/or frustrate the same and there are substantial risks and/or real and imminent danger that if it is not applied for and obtained, the EGM Meeting will not succeed and/or will be futile.

(g) The plaintiffs have very strong case and/or stand herein and Dong Zong will be prejudiced in a very serious way which cannot be compensated with damages if the action and/or injunction applied herein are not granted.

The *Ex parte* Order

[34] On 31 July 2015 I granted an *ex parte* "*quia timet*" injunction order ("the *ex parte* order"). In granting the *ex parte* order, I was satisfied that based on cases such as *PPES Resorts Sdn Bhd v. Keruntum Sdn Bhd* [1990] 1 CLJ 528; [1990] 2 CLJ (Rep) 649; [1990] 1 MLJ 436 at p. 440 and *Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd* [2007] 3 CLJ 295; [2007] 3 MLJ 316 at p. 321 the court had the requisite jurisdiction to make such an order, *albeit* that it would impact upon a party's right to file an action and obtain an order to stultify the event (the EGM) for which the protective order was sought in

A the first place. In particular, I was guided by principles enunciated by Justice Gopal Sri Ram JCA (as he then was) in *Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd* [2007] 3 CLJ 295 at p. 302; [2007] 3 MLJ 316 at p. 321 where he said:

> [4] There is no doubt that **a court has jurisdiction and power to grant an anti-suit injunction whenever the interests of justice call for or demand it**. So an injunction may be issued by our courts to restrain the institution or prosecution of a suit in a foreign jurisdiction where this would lead to a multiplicity of proceedings. See, *BSNC Leasing Sdn Bhd v. Sabah Shipyard Sdn Bhd Ors* [2000] 2 MLJ 70. Similarly, a party may be restrained from presenting a winding up petition if it is found, for example, that there is a *bona fide* dispute about the debt on which the notice of demand issued under s. 218 of the Companies Act 1965 is based. See, *Bina Satu Sdn Bhd v. Tan Construction* [1988] 1 MU 533: *Stoneeate Securities Ltd v. Gregory* [1980] 1 Ch 576. Once the debt on which the proposed petition is based is *bona fide* disputed it matters not that the debtor company is in fact insolvent. See, *Mann v. Goldstein* [1968] 2 All ER 769.
>
> (emphasis added)

[35] In this context, it is also relevant to harken to the following passage from the judgment of Justice Haidar J (as he then was) in *PPES Resorts Sdn Bhd v. Keruntam Sdn Bhd* [1990] 1 CLJ 528; [1990] 2 CLJ (Rep) 649 at p. 656; [1990] 1 MLJ 436 at p. 440 where he said:

> A *quia timet* injunction is a proceeding by which the court is enabled to prevent its jurisdiction from being stultified. (See: *Harris v. Griffith* [1928] Ch 290.) In my view, the present wordings of our s. 54(b) does not muzzle the court in any way from granting an interlocutory injunction in the nature of *quia timet* to restrain a person from instituting or prosecuting a proceeding. On the no jurisdiction issue, Shankar J, in the unreported case of *Li Shing Garments Manufacturing Sdn Bhd v. Kwong Hing Trading Sdn Bhd* (unreported) had the occasion to consider the case of *Cotton Corp of India Ltd v. United Industrial Bank* AIR 1983 SC 1272, relied on by Mr Colin Lau where at pp. 5 and 6, His Lordship stated:
>
> 17. Mr Sri Ram, counsel for Kwong Hing, submitted initially on the strength of s. 54(b) of the Specific Relief Act 1950 that this court had no jurisdiction to entertain Li Sheng's application. He contended that to grant the injunction would be tantamount to staying the proceedings of a court which was not of subordinate jurisdiction. He claimed that the case of *Cotton Corp of India Ltd v. United Industrial Bank Ltd* AIR 1983 SC 1272 demonstrated the fallacy of the argument that s. 54(b) did not inhibit the court from granting an injunction to restrain a party from initiating or continuing with proceedings in a court of co-ordinate jurisdiction but that it only precluded the court from directing such an injunction to the other court. The view taken in India was that such an approach would defeat the real objective of the Indian equivalent of s. 54(b) and therefore the language of the Indian equivalent was amended to bring the statute in line with what was originally intended.

18. Relying on the passages contained in the judgment at p. 1278, he argued that the effect of the Malaysian statute now was specifically to exclude the court from entertaining the plaintiffs application at all. He also exerted that the words of the statute excluded the inherent jurisdiction of the court and also any other residuary power, vested in the court of a similar nature which could be exercised by the High Court in England. (Section 23(2) of the Judicature Act and the parallel powers conferred by the Courts Act 1948.)

19. I am unable to agree that s. 54(b) of the Specific Relief Act 1950 muzzles the court in this way ...

I agree with my learned brother that s. 54(b) of the SRA does not in anyway muzzle the court from granting a *quia timet* injunction in an appropriate case. Here, Keruntum should first establish its legal rights under OM No KG 16 of 1988 which are yet to be determined, and in the absence of that, it cannot now purport to assert its legal rights in proposing to take proceedings against PPES when such legal rights over the forest areas are yet to be established. In *Fletcher v. Beaky* (1885) 28 Ch D 688, Parson.). explained the law as to actions *quia timet* as follows:

> There are at least two necessary ingredients for a *quia timet* action. **There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial**. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action.
>
> (emphasis added)

[36] Hence, based on the facts/circumstances as presented by the plaintiffs as per the affidavits and the legal principles (on *quia timet* injunctions) alluded to earlier, on 31 July 2015, I granted an *ex parte* order on the following terms:

> An Interim Injunction be granted until the disposal of the Originating Summons herein so that the lst defendant and/or his agents and/or his nominees and/or members of the Central Committee and/or members of the Central Executive Committee which are represented by him and/or parties instructed and/or employed by him are restrained from commencing and/or filing and/or pursuing any court action and/or court proceedings including but not limited to application for any Injunction and/or Interim Injunction and/or Ad Interim Injunction and/or other applications in any way to affect, prejudice, stop, restrain and/or frustrate the Extraordinary General Meeting of the Society known as United Chinese School Committees' Association of Malaysia (hereinafter referred to as "Dong Zong") which intended to be held on 23August 2015

A and/or any such other postponed date (hereinafter referred to as "the EGM Meeting") *vide* the Requisition dated 28 July 2015 and the Notice for the EGM Meeting dated 29 July 2015.

Submissions Made On Behalf Of D1

B **[37]** According to counsel for D1, the *ex parte* order is *ultra-vires*, bad in law, misconceived and cannot be allowed to stand, as it essentially:

(a) restrains D1 and other valid CC and CEC members of Dong Zong from commencing and/or instituting any actions, and/or continuing with any existing court actions or proceedings that have been filed, which C includes but not limited to any injunctive reliefs whether interim or ad interim, or any other existing applications that will jeopardise or frustrate the convening of an EGM scheduled to be held on 23 August 2015.

(b) is a deprivation /denial of the D1's and other CC and CEC members' D basic, fundamental and constitutional rights, from seeking remedy and/ or recourse in courts, under existing laws and the Federal Constitution;

(c) contravenes O. 29, r. 2C of the Rules of Court 2012; and

(d) seeks a declaration that all the members of Dong Zong shall be bound and comply with any decision/resolution passed at the said EGM, E depriving or robbing their rights to challenge the same at any forum.

[38] Counsel for D1 also made the following points during submissions:

(a) the right to a remedy, and the guarantee of such right of access is a paramount and fundamental right that cannot be restricted/robbed; F

(b) the right to a remedy is one of the most fundamental rights recognised in legal system as central to the concept of ordered liberty; and

(c) no one shall unfairly deprive any person of life, liberty or property, without due process of law.

G **[39]** Counsel emphasised that it is an undisputable rule that when there is a legal right, there must be a legal remedy by suit or action at law. He said, whenever that right is invaded, as in the instant case by the grant of the *ex parte* order, the ambit of which curtails Dl's and the CC and CEC members rights to seek such a remedy, it is clearly illegal, unlawful, unconstitutional H and *ultra vires*. He referred to *Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd* [1999] 4 CLJ 533 and art. 5 of the Federal Constitution.

[40] To the extent that the plaintiffs have asked for a declaration that any resolutions made in the EGM concerning membership or selection of members of Dong Zong is binding and must be followed by all its members I and other relevant parties not necessarily restricted only to the defendants in this action, it was submitted for D1 that such a declaration is beyond the scope and/or framework of the constitution of Dong Zong and is *ultra vires*. Hence, it was submitted therefore that *ex parte* order is basically a futile

attempt by the Poh faction (utilising the plaintiffs in this action) to rewrite the constitution of Dong Zong, which is clearly unlawful. Counsel for D1 referred to the case of *Majlis Peguam Malaysia & Ors v. Raja Segaran Krishnan & Other Appeals* [2004] 4 CLJ 239.

True Identity Of The Plaintiffs In This Action

[41] According to D1, the plaintiffs are effectively the "alter-ego" of Poh. Hence, D1 maintains that the plaintiffs actually belong to the "Poh faction" that had caused all the upheaval in Dong Zong in the first place. Counsel for D1 submitted that the plaintiffs' action herein and the *ex parte* order was clearly done with the intention of circumventing the effect of the ad-interim injunctions dated 1 June 2015 in OS 35, and the order dated 26 June 2015 in OS 44 that had been obtained by the D1 (in his capacity as the plaintiff in both OS 35 and OS 44) against the Poh faction.

Ad-Interim Injunction Dated 1 June 2015 In OS 35

[42] D1, as the plaintiff in OS 35 obtained an ad-interim injunction dated 1 June 2015 against Poh and Poh's faction, *inter alia*, to restrain Poh and Poh's faction from convening an EGM on 2 June 2015, on basically the same proposed agendas, as the proposed agendas for the EGM to be convened on 23 August 2015. The order reads as follows:

> 1. Defendan-defendan sama ada secara individu atau secara kolektif, ejen-ejen mereka, pembantu, penama atau bagaimana jua pun selainnya dihalang daripada memegang dan/atau mengadakan dan/atau meneruskan Mesyuarat Agung Luar Biasa (EGM) yang akan diadakan pada 02/06/2015 pada 11.00.
>
> 2. Defendan-defendan sama ada secara individu atau secara kolektif oleh diri mereka sendiri, ejen-ejen mereka, pembantu, penama atau bagaimana jua pun selainnya dihalang daripada memegang dan/atau mengadakan dan/atau meneruskan mana-mana mesyuarat berhubung dengan agenda yang dicadangkan seperti yang terkandung dalam Notis bertarikh 12.05.2015.
>
> 3. Secara alternatif di atas, sekiranya EGM tersebut diadakan, dan resolusi yang dicadangkan yang dinyatakan di dalam notis EGM tersebut diluluskan, suatu perintah bahawa resolusi yang diluluskan pada EGM itu adalah batal dan tidak sah.
>
> 4. Di samping itu, sekiranya mana-mana EGM diadakan dan mana-mana resolusi yang dicadangkan yang dinyatakan di dalam Notis Mesyuarat Agung Luar Biasa tersebut diluluskan, suatu perintah yang menghalang Defendan, pekerja-pekerja mereka, ejen atau dengan apa cara jua daripada melaksanakan atau menguatkuasakan, mana-mana resolusi yang diluluskan pada EGM tersebut.

[43] According to D1, by filing this action and praying for the reliefs sought, the plaintiffs are attempting to mislead and/or hoodwink this court into granting them the orders originally sought by the Poh faction to hold an EGM, on the same agendas, which had been restrained by the *ad-interim*

injunction dated 1 June 2015 in OS 35. D1 asserts the OS has been orchestrated by Poh and his faction by utilising the plaintiffs as their puppets, which is akin to a "back door" approach to ultimately further their illegal, improper, unconstitutional agenda which had been restrained in OS 35.

***Ad-Interim* Injunction Dated 26 June 2015 in Suit 44**

[44] D1 as the first plaintiff in OS 44, obtained an ad-interim injunction dated 26 June 2015 against Poh and his faction, *inter alia*, to restrain Poh and his faction from giving effect/enforcing any resolutions passed at the alleged illegal CC meeting convened on 10 June 2015, and/or at any further meetings convened pursuant to the CC meeting of 10 June 2015, and/or holding themselves out or acting as the newly re-elected office bearers/CEC members.

[45] The particular part of the ad-interim injunction order that was relied upon by D1 in the present OS is para. 8 which reads as follows:

> Defendan-defendan sama ada secara individu atau secara kolektif, ejen-ejen mereka, pembantu, penama atau bagaimana jua pun selainnya dihalang daripada memanggil dan/atau mengadakan apa-apa mesyuarat Dong Zong yang selanjut, meluluskan mana-mana resolusi-resolusi dan melaksanakan dan/atau menguatkuasakan apa-apa resolusi-resolusi yang diluluskan dalam mana-mana mesyuarat tersebut, lanjutan daripada Mesyuarat Khas Jawatankuasa Pusat yang diadakan pada 10.06.2015, dan pembubaran Jawatankuasa Eksekutif Pusat ke-29, dan pemilihan semula Ahli-ahli Jawatankuasa Eksekutif Pusat ke-29 pada Mesyuarat Khas Jawatankuasa Pusat yang diadakan pada 10.06.2015.

[46] It was submitted on behalf of D1 that the plaintiffs are not independent members but are in fact agents, servants and/or nominees of Poh and/or his faction. Further, D1 alleges that the plaintiffs who are purportedly representing the five State Association Members are not independent members but are the agents, servants and/or nominees of Poh's faction who are parties in OS 87, OS 35, OS 40 and OS 44. It was therefore submitted for D1 that since the *ad-interim* injunctions orders dated 1 June 2015 and 26 June 2015 have expressly restrained the servant, agents and/or nominees of Poh's faction/the defendants in the OS 35 and OS 44, therefore the plaintiffs herein who are in Poh's faction are also restrained/prohibited from convening the EGM on 23 August 2015 on the proposed agendas, and pass any such resolutions thereat, in particular to dissolve the present CC/CEC and re-elect all the CC and CEC members of Dong Zong.

[47] D1 alleges that the plaintiffs in this action are merely "puppets" of Poh and his faction and that the court in OS 35 and OS 44 had taken cognisance of the actions of the Poh faction and accordingly restrained them by interlocutory injunctions granted in OS 35 and OS 44. Therefore, D1 alleges that by allowing the plaintiffs to come to this court and to apply for an *ex parte* order to further their agenda which had been prohibited/restrained by the injunctions in OS 35 and OS 44, is clear evidence of the plaintiffs act

of overreaching by trying to assist the Poh faction to further their illegal, improper and unconstitutional agenda in defiance of the restraint imposed on the Poh faction.

[48] D1 also contends the fact that the solicitors/counsel representing the plaintiffs herein are the same solicitors/counsel who represented/represent Poh and his faction in OS 87, OS 35, OS 40 and OS 44. It was submitted therefore that the conduct of the solicitors and counsel is a flagrant breach of their duty as officers of court, and that they had misled this court in the granting of the *ex parte* order. D1 maintains that the fact that the injunction was granted *ex parte* is clearly evidence of this abuse, which could only have happened because the solicitors and counsel of the plaintiffs, who also represent the Poh faction in OS 87, 35, 40 and 44 have facilitated it. D1 suggests that the said solicitors and counsel would have thoroughly advised the plaintiffs on the background facts, all the court proceedings and the court orders obtained, to date. As such, the plaintiffs are well aware and have full knowledge of all the facts, and all the restraining orders, pursuant to the ad-interim injunctions obtained on 1 June 2015 and 26 June 2015.

[49] It was also submitted for D1 that the plaintiffs are also well aware and have full knowledge of the actual, lawful and rightful current chairman and office-bearers of Dong Zong. The *ad interim* injunction dated 26 June 2105 expressly and specifically restrains Poh's faction (elected as the purported new chairman and office bearaers) from acting as and/or holding out as the office bearers of Dong Zong, until the final disposal of the *inter-partes* hearing. As such, D1 states that the contention of the plaintiffs that they are confused or do not know who the actual and lawful chairman and/or office bearers are, is untrue.

Failure On Part Of The Plaintiff To Comply With The Provisions Of O. 29 r. 1(2), (2A) And (2C) Of The Rules Of Court 2012

[50] Counsel for D1 also attacked the *ex parte* order on the basis of procedural non-compliance. D1 states that in the plaintiffs' affidavit in support, they merely stated that the application is an urgent one and if not heard *ex parte*, D1 will file an action that will jeopardise or frustrate the EGM scheduled on 23 August 2015. D1 says that this is untrue. D1 contends that the plaintiffs are well aware and have full knowledge of the injunctions that have been granted in OS 35 to injunct the Poh faction from proceeding with an EGM, scheduled to take place on 2 June 2015. Counsel for D1 submitted that the plaintiffs have not complied with the requirements of O. 29 rr. 1(2) and 2A and 2C of the Rules of Court 2012. Hence, counsel said that on this ground alone the *ex parte* injunction ought to be dissolved by this court.

The Plaintiffs Conduct Is An Abuse Of The Court

[51] Counsel for D1 emphasised that the court should have regard to the true and proper events that led to the ad-interim injunction order dated 1 June 2015 in OS 35 that was obtained by D1 to prevent the Poh faction

A from proceeding with the proposed EGM. As such, counsel said that the *ex parte* order ought to be dissolved to maintain the status quo in OS 35 and 44, both of which were filed first in time.

Dl's Application For Leave For Committal – (encl. 17)

B **[52]** The *ex parte* order and the OS were served on D1 on 1 August 2015. The matter came up before me on 10 August 2015 for the hearing of the *inter partes* application of an injunction. On that day, counsel for D1 appeared. I then fixed the originating summons (encl. 1) and the application for an injunction (encl. 5) for hearing on 21 August 2015. Directions were given for the filing of affidavits and written submissions. On 19 August 2015, C D1 filed an application for leave under O. 52 r. 3(1) ROC for committal, with a certificate of urgency. I shall refer to it as "the O. 52 leave application". Essentially, D1 moved the court under the O. 52 leave application for leave for committal against the plaintiffs and this has been predicated on Dl's assertion that the plaintiffs are part of the Poh faction and D are agents or servants or persons acting according to the instructions of the Poh faction. The plaintiffs are accused of being guilty of the following:

(a) interfered with due administration of justice or cause of justice in presenting a repeated vexatious claim which is the subject matter of earlier pending actions by way of OS 87, OS 35, OS 40, OS 44; and E

(b) obtaining the *ex parte* order dated 31 July 2015 with an intention to frustrate the existing orders, in particular, the order dated 26 June 2015 and therefore abusing the process of the court.

F **[53]** D1 contends that the plaintiffs are allegedly circumventing the orders dated 1 June 2015 and 26 June 2015 that was obtained by D1 in OS No. 35 and OS No. 44 respectively. He therefore seeks leave of this court for committal against the plaintiffs.

[54] These are my grounds in respect of the O. 52 leave application.

G **[55]** At the outset, counsel for D1 Dato' Harpal Singh asked that the O. 52 leave application be heard first before any other application. He said that there are very serious matters which have transpired by the filing of this application and obtaining reliefs on *ex parte* basis. He amplified his stand by stating that there is a matter which is before YA Justice Dato' Asmabi H Mohammed which is fixed for case management on 26 August 2015 and so finality can be achieved on that date. He emphasised that the *ex parte* order granted by this court frustrates the injunctions granted by YA Dato' Asmabi Mohamed on 1 June 2015 and 26 June 2015. He said that these are binding orders and as such no EGM can be held. He maintained that there is a "*prima facie*" for contempt and that there is a case for leave to be granted. I

[56] The O. 52 leave application came up before me on 21 August 2015. It was heard in open court. Counsel for D1 was present in open court. Also, since this matter was fixed for hearing of the OS (encl. 1) and an application

for injunction (encl. 5), counsel for the plaintiffs were also present in open court when this application for leave came up for hearing. The application was an *ex parte* application and as such, the cause papers had not been served on the plaintiffs.

[57] But given the uniqueness of the background to the present proceedings, it was quite obvious to counsel for the plaintiffs that he was in no way handicapped by not being served with the relevant cause papers. There was also an extreme urgency for this matter to be dealt with expeditiously. Since all counsel were already before the court, I asked lead counsel for D1, Dato' Harpal Singh Grewal whether he had any objections if lead counsel for the plaintiffs, Mr Justin Voon, was heard on his application for leave, *albeit* that it was *ex parte* application. In response to my query, Dato' Harpal Singh Grewal said that he had no objections. His conduct in inviting Mr Justin Voon to respond is commendable and is thoroughly appreciated by the court. As such, by consent, Mr Justin Voon, counsel for the putative alleged contemnors, was given liberty to address the court in response to the O. 52 leave application. I therefore called upon Mr Justin Voon to address the court.

[58] Mr Justin Voon said that in view of urgency he will respond as best as he could as he has not sighted the papers. But he acknowledged that he has become aware of what the other side's complaint is and will respond accordingly. The submissions made by Mr Justin Voon have assisted this court in deciding on whether leave should be granted. This underscores the need which may arise in certain cases, to have the other side's view, even though the matter is being heard on an *ex parte* basis.

[59] Mr Justin Voon submitted that the O52 leave application was filed on 19 August 2015 (two days before today) and that of itself was obviously an abuse of process by D1 and not by the putative alleged contemnors. He said that D1 was aware that the matter is fixed for disposal of encl. (1) and (5) on 21 August 2015 and if he really wanted to defeat the OS then he has to oppose it and get it dismissed on merits.

[60] In particular he pointed out that the *ex parte* order and the OS were served on D1 on 1 August 2015 (about 18 days before he filed the leave application).

[61] On 10 August 2015 an ad-interim order was granted and directions were given and the court informed parties that the OS would be disposed off on 21 August 2015. He suggested that Dl's real purpose is to obtain leave for committal and scuttle the OS. He said that instead of filing the application for leave for committal, D1 should allow for the OS to be heard on merits and that is how this OS should be dealt with. He submitted that there was no *prima facie* case. He pointed out that the order dated 1 June 2015 which was granted in the other court was specific to the EGM which was to be held on 2 June 2015.

[62] He said that there is no proof that the present plaintiffs are "agents" of Poh and in this regard reference was made to para. 8 encl. 1 and encl. 13 pp. 33-37. He referred to the statutory declarations of all five plaintiffs where they declared that they are not acting on behalf of Poh. Their declaration reads as:

> I therefore act independently and not on behalf of Poh Chin Chuan and/ or Tan Tai Kim or any of the persons under them or representing them.

[63] In response to Dl's suggestion that the use of the same solicitors is proof that the plaintiff's are the agents of Poh and/or Tan, Mr Justin Voon referred to the plaintiffs explanation which is to be found in paragraph of encl. 13.

[64] Basically, the present plaintiffs explained that they needed a firm of solicitors who knew the history of the matter. Hence, it was only logical for them to use solicitors who already understood everything that needs to be understood for purposes of filing the OS.

[65] Mr Justin Voon repudiated the submission made in relation to the order dated 26 June 2015. He said the purpose of the order dated 26 June 2015 is to injunct Poh and Tan as chairman based on the meeting on 10 June 2015 which was an alleged Central Committee meeting and that it was also to injunct Tan/Poh from holding an AGM, because the meeting of 10 June 2015 is invalid.

[66] He emphasised that the First ROS notice dated 30 June 2015 (exh. 2 encl. 2 p. 67) was served on Dong Zong on 2 July 2015 and that the one month period would expire on 2 August 2015. Therefore, the plaintiffs responded by making the requisition for EGM and then going to court. He pointed that when the orders dated 1 June 2015 and 26 June 2016 were made by the court in OS 35 and OS 44 respectively, there was no notice by ROS that had been issued against Dong Zong.

[67] Thus, it was submitted for the plaintiffs that there is no breach of the orders dated 1 June and 20 June 2015 because:

(i) the plaintiff are not parties in OS 35 and OS 44 before YA Justice Dato' Asmabi bte Mohamad;

(ii) those orders made are specific to the EGM which was scheduled to be held on 27 June 2015 and to injunct Poh/Tan from taking action based on the meeting on 10 June 2015 and to injunct the AGM which was to be held on 27 June 2015. The agenda for AGM is the usual agenda and was not an agenda that was to solve the crisis.

(iii) the plaintiffs have deposed on affidavit and sworn statutory declarations to categorically state that they are acting independently and not on behalf of Poh/Tan or persons acting for them.

(iv) from 1 August 2015 when the *ex parte* order was served on D1 until 19 August, when encl. 17 was filed, D1 could have applied urgently to discharge *ex parte* order. If he had done so, then he could have filed an action to restrain the EGM.

[68] Instead of setting aside the *ex parte* order, which was subsequently continued by way of an interim order, D1 applied *ex parte* for leave for committal at the last minute. Counsel for the plaintiffs relied on *RIH Services (M) Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd* [2002] 3 CLJ 83; [2002] 3 MLJ p. 1 CA for the proposition that Dl's proper recourse is to have applied to set aside the *ex parte* order. In particular he referred to the following passage:

> It should be added that when the court hears the application, *inter partes*, the issue is whether the court should or should not grant a fresh injunction, *inter partes*. The court is not considering whether or not to extend the *ex parte* order, which cannot be extended beyond 21 days. Neither is the court concerned with the question whether the *ex parte* order should be set aside or not. Those are not the issues before the court. However, if the defendant wants to set aside the *ex parte* order, the defendant is at liberty to file an application for that purpose. It is at the hearing of that application that the court should decide whether to set it aside or not, if it has not lapsed. If, in the meantime, the *ex parte* order has lapsed, the court should nevertheless hear the application, not for the purpose of setting it aside or not, because it has lapsed, but for the purpose of determining whether that *ex parte* order should or should not have been made in the first place. This is necessary in order to determine whether damages should be awarded or not (see p. 8-9 of the judgment).

My Conclusion (encl. 17) (O. 52 Leave Application)

[69] The issue here is whether leave for committal should be granted. I have read the O. 52 statement. The gravamen of the complaint by D1 for the purposes of the O. 52 leave application appears to be the orders dated 1 June 2015 and 26 June 2015 granted by YA Justice Dato' Asmabi bte Mohamed in OS 35 and OS 44 respectively. The relevant part of the order dated 1 June 2015 reads as follows:

> 1. Defendan-Defendan sama ada secara individu atau secara kolektif, ejen-ejen mereka, pembantu, penama atau bagaimana jua pun selainnya dihalang daripada memegang dan/atau mengadakan dan/atau meneruskan Mesyuarat Agung Luar Biasa (EGM) yang akan diadakan pada 2 June 2015 pada 11.00.
>
> 2. Defendan-Defendan sama ada secara individu atau secara kolektif oleh diri mereka sendiri, ejen-ejen mereka, pembantu, penama atau bagaimana jua pun selainnya dihalang daripada memegang dan/atau mengadakan dan/atau meneruskan mana-mana mesyuarat berhubung dengan agenda yang dicadangkan seperti yang terkandung dalam Notis bertarikh 12.05.2015.

[70] The relevant part of the order dated 26 June 2015 in OS 44 reads as follows:

> Defendan-Defendan sama ada secara individu atau secara kolektif, ejen-ejen mereka, pembantu, penama atau bagaimana jua pun selainnya dihalang daripada memanggil dan/atau mengadakan apa-apa mesyuarat Dong Zong yang selanjut, meluluskan mana-mana resolusi-resolusi dan melaksanakan dan/atau menguatkuasakan apa-apa resolusi-resolusi yang diluluskan dalam mana-mana mesyuarat tersebut, lanjutan daripada Mesyuarat Khas Jawatankuasa Pusat yang diadakan pada 10 Jun 2015, dan pembubaran Jawatankuasa Eksekutif Pusat ke-29, dan pemilihan semula Ahli-ahli Jawatankuasa Eksekutif Pusat ke-29 pada Mesyuarat Khas Jawatankuasa Pusat yang diadakan pada 10 Jun 2015.

[71] I agree that that part of the order dated 1 June 2015 in OS 35 is directed at the proposed EGM which was to be held on 2 June 2015 wherein the agenda for that EGM was to pass a motion of no-confidence and to dissolve the CC and to re-elect the 29th Central Committee States and re-organise the 29th CC and CEC of Dong Zong, (p. 125)(encl. 2).

[72] The agenda for the proposed EGM on 23 August 2015 is as follows:

> (1) Agenda 1 : Untuk menyelesaikan krisis kepimpinan Dong Zong, seluruh keahlian Dong Zong di bawah Klausa 5.2 (5.2.1 hingga (5.2.4) Perlembagaan [untuk Jawatankuasa Pusat] dan Klausa 5.3 (5.3.1) Perlembagaan [untuk Jawatankuasa Eksekutif Pusat] dipilihkan sekali lagi mengikut kehendak undian majoriti ahli-ahli negeri Dong Zong;
>
> (2) Agenda 2 : Resolusi-Resolusi relevan dan/atau consequential diluluskan untuk memberi efek kepada (1) di atas termasuk tetapi tidak terhad kepada pembubaran dan/atau penggantian dan/atau pemilihan semula mana ahli-ahli dan/atau jawatankuasa di bawah (1) dan untuk menyelesaikan krisis kepimpinan Dong Zong.

[73] Dato Harpal says that by virtue of the order dated 26 June 2015 in OS 44, there is a blanket embargo on any EGM which has an agenda which is similar to the agenda for the EGM which was injuncted by the order dated 1 June 2015 in OS 35.

[74] In so far as the order dated 26 June in OS 44 is concerned, it appears to me to be clearly targeted at the impugned CC meeting held on 10 June 2015 (p. 224 encl. 2). I do not see it as restraining anyone from requisitioning and holding an EGM particularly an EGM which has been precipitated by the ROS actions.

[75] I turn now to the order dated 1 June 2015 in OS 35. In this regard, Mr Justin Voon says that the order is ambiguous. He says that the order does not say that it injuncts all State Committees of Dong Zong. It only states that the defendants therein and their servants or agents are injuncted. In my view, if the present plaintiffs are considered to be agents of the defendants in

OS 44 then they should be hauled up before YA Justice Asmabi for her to take such appropriate action as may deemed necessary if it is proven that there has been a breach of her order dated 1 June 2015 in OS 35.

[76] I also take on board the submission made by Mr Justin Voon that the order dated 1 June 2015 in OS 35 must be seen in the context of the facts then prevailing which is the leadership tussle between the two factions. The ROS action was not part of the equation. But the scenario has changed with the issuance of the ROS notices. The ROS action is the sole reason for the action taken by the plaintiffs in requisitioning for the EGM and filing the OS and obtaining the *ex parte* order.

[77] I also note that the O. 52 Statement does not specifically state that the plaintiffs are the agents or the alter ego of the defendants in OS 44. The closest that has been asserted in this regard, if at all, are the averments in paras. 29, 30 and 31 which to my mind is too general. Given that committal is a *quasi*-criminal proceeding and the grounds must be specifically stated in the O. 52 Statement itself, the ground that the plaintiffs are the agents of the defendants in OS 44 cannot be asserted or relied upon for purposes of the O. 52 leave application. In *Lee Lay Ling v. Goh Kim Nam & Anor* [2013] 1 LNS 1000; [2014] 8 MLJ 805, I dealt with the need for procedural safeguards and the importance of strict adherence to particularisation of the grounds in the O. 52 statement. I refer to the following passage in that case which underscores the importance of setting up the grounds clearly in the O. 52 statement:

> THE LAW OF CONTEMPT
>
> **[7]** Before embarking on an analysis of the facts and the issues relevant to the application for committal, it is appropriate to remind ourselves of the principles pertaining to the law of contempt, which underpin an application of this nature. In this regard I refer to the most recent statement of the substantive and adjectival aspects on the topic which is found in the judgment of the Chief Justice of the Federal Court, YAA Tun Ariffin bin Zakaria in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458. I will quote only those parts of the judgment that are relevant to the matter under discussion in this judgment.
>
> ...
>
> [26] Contempt has been reclassified either as (1) **a specific conduct of contempt for breach of a particular court order**; or (2) a more general conduct for interfering with the due administration or the course of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc* at p. 362:
>
> ...

A [29] It is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. Premised upon that, the **law has provided procedural safeguards in committal proceeding which requires strict compliance**. In this regard, Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112 had this to say:

B > **Committal is a very serious matter**. The courts must proceed very carefully before they make an order to commit to prison; and **rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations**.

C [32] In *Chanel Ltd v. FGM Cosmetics* [1981] FSR 471 Whitford J was reported to refuse an order of committal as he found the **notice of motion for committal before him to be bad because it failed on its face to specify the precise breaches of the undertaking of which the plaintiffs complained**.

D [33] The same spirit was echoed in *Chiltern District Council v. Keane* [1985] 2 All ER 118, where Sir Donaldson MR at p 119 made this observation:

> However, where the liberty of the subject is involved, this court has time and again asserted that the procedural rules applicable must be strictly complied with.

E THE SAFEGUARDS UNDER O 52 OF THE RHC

[34] The procedural law on committal in our law is laid down in O. 52 of the RHC which is based on the then O. 52 of the English Rules of Supreme Court 1965 (Revision 1965). It provides that no application for a committal order can be made without leave of the F court. The application for such leave must be made in accordance with O. 52 r. 2 of the RHC.

[35] For ease of reference, r. 2 is reproduced below:

> 2(1) No application to a Court for an order of committal against any person may be made unless leave to make such an application G has been granted in accordance with this rule.
>
> (2) An application for such leave must be made *ex parte* to the Court, except in vacation when it may be made to a Judge in Chambers, and must be supported by a statement setting out the name and description of the applicant, the name, description H and address of the person sought to be committed **and the grounds on which his committal is sought**, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

[36] The safeguards in r. 2(2) entail the application to be supported by I a statement describing amongst others, the person sought to be committed and the grounds on which he is alleged to be in contempt. It must be supported by an affidavit verifying the facts relied on in the statement.

A

[37] We wish to state in clear term that **the alleged act of contempt must be adequately described and particularised in detail in the statement itself**. The accompanying affidavit is only to verify the facts relied in that statement. It cannot add facts to it. *Any deficiency in the statement cannot be supplemented or cured by any further affidavit at a later time. The alleged contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. This must be done within the four walls of the statement itself.*

B

(emphasis added)

[8] Hence, it is clear that for committal, the charge of contempt must be based on the grounds as set out in the statement filed pursuant to O. 52 of the Rules of Court 2012 and it would be impermissible for the party applying for committal to rely on matters stated in affidavits or submissions. (pp. 813-814 of the judgment)

C

[78] In any event, I am satisfied that there is at the very least some ambiguity in the order dated 1 June 2015 in OS 35 ie, as to whether all State Committees are restrained from requisitioning an EGM to resolve the leadership crisis and/or whether the order was intended as a blanket embargo to prevent any EGM to resolve the leadership crisis of Dong Zong regardless of any change in circumstances such as the ROS actions which may lead to its de-registration. It is trite that if there is any ambiguity in an order which is being enforced by committal, then such ambiguity will be construed in favour of the putative contemnors. In *Bee Ah Nya v. Ooi Ah Yan* [2014] 6 CLJ 991; [2014] 8 MLJ 601, I had occasion to consider the point relating to ambiguity in a court order in the context of committal proceedings. I refer to the following passages in that case:

D

E

F

[34] Counsel for PW made a valiant attempt at disambiguating the terms of the consent order but ultimately it did not achieve its purpose as the ambiguity remained extant right till the end. As I said, if there is any ambiguity, then the ambiguity works in favour of the contemnor. This appeared to be the approach which was taken by Mr Justice Dato' Hj Abdul Malik Ishak (as he then was) in *Dato' Seri S Samy Vellu v. Penerbitan Sahabat (M) Sdn Bhd & Ors (No 1)* [2005] 5 MLJ 489 where he dismissed the committal proceedings against the alleged contemnors on the grounds, *inter alia*, that, 'the *ex parte* injunction order dated 1 December 2003 is *unclear and ambiguous* – disparity between the Malay language version and the English language version and so *any doubt should be given to the alleged contemnors, who are the defendants here, bearing in mind that the standard of proof required in contempt of court proceedings is beyond reasonable doubt*. (emphasis added)

G

H

[35] Hence, where the order (regardless of whether it is a consent order or a coercive order made by the court) suffers from any lack of clarity or is ambiguous, then the benefit of doubt has to be given to the alleged contemnor. In this regard it would be relevant to refer to the decision of the Court of Appeal in *Dato' Seri Yusof bin Dato' Biji Sura @ Mohamad v. BTM Timber Industries Sdn Bhd & Ors* [2010]

I

A

> 1 MLJ 644 (CA) where the court upheld the decision of the High Court which had dismissed a committal application holding that if the order itself is ambiguous then it is not capable of being enforced by committal. This how the Court of Appeal put it at p 655 of the judgment; 'The learned judge was clearly right in stating that an order will not be enforced by committal if its terms are vague or ambiguous, the rule being analogous to that which governs the interpretation of penal statutes. It is to the terms of the order itself that one must look in order to define the obligations imposed. See *Arlige, Eady & Smith on Contempt*, (2nd Ed), paras. 12-43 p. 746'.

B

[79] In light of that ambiguity and all the other points that I have alluded to earlier, I am constrained to hold that the O. 52 leave application does not pass the requisite threshold and I am accordingly dismissing it. In the result, the O. 52 leave application (encl. 17) is dismissed and I made no order as to costs as it is an *ex parte* application.

C

Decision On The OS And Encl. 5

D

[80] The fact that there is a leadership crisis within Dong Zong is undisputed. That's probably the only fact that is not disputed. The dispute has escalated beyond the Dong Zong and it is now under curial scrutiny by the ROS. They have vast powers under the Act.

E

[81] They issued a notice dated 30 June 2015 under s. 16(1) of the Act giving the Dong Zong one month to show evidence that the crisis relating to the election of office bearers has been resolved. The notice was served on the Dong Zong on 1 July 2013. The notice would have expired on 2 August 2013. On 30 July 2015, D1 issued a letter to ROS rendering a purported explanation as to the state of affairs and asking for more time. However, ROS nevertheless proceeded to issue a notice dated 6 August 2015 under s. 13(2) of the Act asking Dong Zong to give reasons why it should not be de-registered. The ROS notice dated 6 August 2015 reads as follows:

F

> Bahawasanya mengikut Seksyen Kecil (2), Seksyen 13, Akta Pertubuhan 1966, maka dengan ini diberi Kenyataan bahawa adalah maksud Pendaftar Pertubuhan hendak membatalkan pendaftaran pertubuhan ini selepas 6 September 2015 kecuali sebelum itu diberikan sebab-sebab yang memuaskan Pendaftar Pertubuhan mengapa kebenaran tersebut tidak patut dibatalkan.

G

> 2. Adapun cadangan pembatalan pendaftaran yang dimaksudkan di atas adalah kerana pertubuhan ini gagal menyelesaikan pertikaian dalam tempoh yang diberikan.

H

> Diperbuat pada 6 haribulan OGOS 2015.

[82] Essentially, the ROS notice dated 6 August 2015 is a statutory "show-cause" notice. It carries with it grave implications. According to En Khairul Fazly bin Kamaruddin, the learned SFC who appeared on behalf ROS before me, de-registration will occur after 6 September 2015 unless before that date, Dong Zong is able to provide ROS with a valid explanation

I

as regards the leadership crisis. He said that Dong Zong may appeal to the Minister under s. 18 of the Act but an appeal does not operate as a stay and that post de-registration, if Dong Zong carries out any activity then that would be an offence under the Act. The de-registration would be entered in the Government *gazzette*.

[83] If the appeal to the Minister is allowed and de-registration is set aside, then the re-registration would be likewise gazetted. And so it is clear that the consequences to Dong Zong are enormous and the loss and damages may be permanent, intangible and irreparable.

[84] The proposed EGM on 23 Aug 2015 is said to be the last avenue for the supreme body of Dong Zong to resolve the crisis. Whether the leadership crisis is resolved at the EGM or not remains to be seen.

[85] It is obvious and indeed it cannot be denied that the proposed EGM is a response to the ROS notice dated 30 June 2015. The present plaintiffs are all individuals who represent five different State Members of Dong Zong. They have not been named as plaintiffs or defendants in any previous legal proceedings involving D1 or the Poh faction. It is alleged that they are agents of the Poh faction. Of course, that is a possibility but whether it is a reality or not is difficult to say as the plaintiffs have categorically denied that they are agents of the Poh faction and they have explained why they used the same solicitors. According to the plaintiffs they used the same set of solicitors as these solicitors already know the history of the litigation and they would be able to readily and expeditiously file the requisite papers. Here, I find that the explanation rendered by the plaintiffs as to their independence or neutrality is not implausible or improbable. The use of the same solicitors and counsel is also sensible and practical. It is not sinister in any sense.

[86] Indeed, if D1 was serious about attacking the plaintiffs as to their avowed neutrality then there should have been an application to cross-examine the deponent of the plaintiffs' affidavits, Mr Ting Chuen Peng. But that was not done.

[87] Of course, it is possible that the plaintiffs may well be sympathetic to the Poh faction and may even have a dislike for D1's leadership, but that of itself does not equate with or sustain the allegation that the plaintiffs' are agents of the Poh faction. Presently, I find that there is no evidence before the court that the plaintiffs are agents or the alter ego of the Poh faction. It remains as a mere allegation by Dl.

[88] I now turn to the issue of the Rules of Dong Zong. They are clearly silent as to what is to happen if there is to be an expulsion or removal or re-election of office bearers. The Rules do not cater for such an eventuality.

[89] The Rules only provide for the election of office bearers at an election held in an election year and for appointments to be made when there is a vacancy. But it says nothing about expulsion or removal or re-election

in the event of change of circumstances such as happened in this case. According to counsel for the plaintiffs since 1954 when the Dong Zong was established this is the first time that it is experiencing a leadership crisis. Obviously the framers of the Rules did not expect or anticipate there would be such a leadership crisis as would necessitate provisions to cater for such an eventuality. As such, there is clearly a gap or lacuna in the Rules.

[90] The question is whether a term should be implied in the Rules to allow the EGM as the supreme body of Dong Zong to address the leadership crisis and to find a solution to the leadership tussle which has dragged on for the last several months and which is putting an important and critical event, the UEC Examination, which is to be held in October, in jeopardy. This has a severe public interest dimension to it as the leadership crisis has the real potential of jeopardising the UEC.

[91] In my view, the case law authorities such as *Cheah Phee Guan v. Persatuan Sek Tong Cheah Si Seh Tek Tong Hock Haw Kong Kongsi* - Penang High Court OS 24NCVC-1190-10-2013 (unreported) (the ruling of which was upheld by the Court of Appeal in Civil Appeal No. P-02 (NCVC) (A)-1222-07-2014 dated 19 January 2015) and *Yap Kian v. Poh Chin Chuan & Ors* [2015] 1 LNS 456; [2015] 4 AMR 311at 321 HC, have recognised that in certain circumstances it would be proper to imply a term in the Rules of a society to fill in the lacuna in the relevant Rules.

[92] In *Yap Kian v. Poh Chin Chuan & Ors* [2015] 1 LNS 456; [2015] 4 AMR 311 at 321 (a case involving the very same parties and the decision of which has been appealed against), Justice Vazeer Alam Mydin Meera in a carefully considered and comprehensive judgment said:

> [33] Having considered the law and the facts, I find that there is no merit in the plaintiffs contention that the CEC once elected must serve out its full term of four (4) years, and that it cannot be dissolved midstream. It is trite law that where a constitution or law confers powers to appoint, the appointing authority would also have the power to remove. This principle was very well restated by Syed Ahmad Idid J in *Sabdin Ghani v. Musa Aman* [1993] 2 CLJ 109 at 113 as follows:
>
> > ... where the constitution confers power to appoint, the appointing authority should also have the power to remove, to suspend, to re-appoint or reinstate.
>
> [34] This principle is also statutorily embodied in ss 47 and 94 of the Interpretation Acts 1948 and 1967 (Consolidated and Revised 1989) in the following terms:
>
> > Section 47
> >
> > Where a power to make an appointment is conferred by any written law, the appointing authority shall also have power (subject to any limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint or re-instate any person appointed in the exercise of the power.

Section 94

Where a written law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss or suspend any person appointed and to appoint another person temporarily in the place of any person so suspended or in place of any sick or absent holder of such office or place:

Provided that where the power of such person or authority to make such appointment is only exercisable upon the recommendation or subject to the approval or consent of some other person or authority, such power of dismissal shall, unless the contrary intention appears, only be exercisable upon the recommendation or subject to the approval or consent of such other person or authority.

[35] The Court of Appeal in *Lim Eye Thun v. Majlis Peguam Malaysia & Anor* [2010] 4 AMR 125 at 132; [2010] 2 MLJ 444 at 445 reiterated this principle in the following terms:

This power to appoint carries with it the power to revoke the appointment; see SR Tewari, where the Allahabad Supreme Court held that the power to appoint ordinarily carries with it the power to terminate appointment, and a power to terminate may, in the absence of restrictions express or implied, be exercised subject to the conditions prescribed in that behalf by the authority competent to appoint. In Malaysia, this principle is given statutory expression in s 47 of the Interpretation Acts 1948 and 1967 in the following words ...

[36] The Singapore High Court in *Low Fun Boon & Ors v. Wong Teck Chow & Ors* [2000] SGHC 183 had occasion to consider a similar issue as to whether the general body of a registered society which was empowered to appoint the office bearers had the implied power to remove them and held as follows:

... as the general meeting had power to elect office bearers, I was of the view that it must also have the implied power to remove such office bearers, see *Halsbury's Laws of England*, (Fourth edn) vol 9 at paragraph 1266 and *Chen Cheng & Anor v. Central Church & Anor* [1996] 1 SLR 313.

Furthermore, the general meeting is the highest authority of the association which has the power to pass or revise the rules and regulations of the association. Accordingly, it could pass a resolution to remove the president as an ad hoc revision of the rules and regulations.

[37] In *Halsbury's Laws of England*, (Fourth edn – 2006 reissue) vol 9(2) at paragraphs 1163 and 1166 the position in England in respect of this issue is summarised as follows:

A

> 1163. Power of amotion. "Amotion" means depriving a corporate officer of his office. A power of amotion is incident to a corporation, unless it has been taken away by statute. It is necessary to the good order and government of corporate bodies that there should be such a power ...

B

> 1166. Removal of officer at will. Where a person is appointed to and holds an office at the will of the corporation, he may be removed from it at the will of the corporation, which may be signified to him by a mere declaration by the competent authority ...

C

[38] That English common law position, in my opinion, would be the correct proposition of the law in Malaysia as well. This has been consistently expressed by our courts, as can be seen from the cases referred to above.

D

[39] The highest or supreme constitutional authority of Dong Zong, as provided in rule 5.1.1 of the constitution, is the general meeting. It is the general meeting that elects the CC, to supervise and oversee the affairs and management of the society. The CC in turn elects the officer-bearers, who together with the three members appointed by the chairman, constitute the CEC. According to rule 5.3.3 of the constitution, the CEC shall during the adjournment of the CC, be responsible for the running of the affairs of the society and shall execute all resolutions of the CC.

E

Therefore, the CEC is a creature born out of the constitutional powers granted to the CC, and as such, by implication, would at all times have the power to dissolve the CEC or remove any of its office bearers, unless otherwise expressly or impliedly provided in the constitution. Since, there is no such express or implied prohibition in the constitution, the CC must

F

necessarily be taken to have the implied power to remove such office bearers and dissolve and reconstitute the CEC during the pendency of their term of office.

[40] My reasoning in this regard is further supported by the highly persuasive opinion of Herbstein J at the High Court of South Africa, in the case of *Cape Indian Congress v. Transvaal Indian Congress* 1948(2) SA 595

G

AD, where in resolving a similar question relating to the lawfulness of the removal of office bearers of an association before the expiry of their term of office, the learned judge had held that:

H

> The fixing of a period for which a committee is to serve, does not, in my view, constitute a contract by the principal with the agent that he will not, during that period, provoke the authority. Nor, in my opinion, can such a contract be implied here. There must be special circumstances before such inference can be drawn.

[41] That dicta in *Cape Indian Congress v. Transvaal Indian Congress* was considered and applied by another High Court of South Africa (Western

I

Cape High Court, Cape Town) in the more recent case of *SWD Rugbyvoetbalunie En Een Ander v. Hennie Baartman* (Case No. 24939/2009) [2010] ZAWCHC 82. Le Granje J in delivering the well reasoned decision of the court in that case held as follows:

The right of members of a voluntary association to remove the management committee or any member thereof before their term of office has expired, has been the subject of a number of decided cases in our law.

In the absence of any provision in a constitution of a voluntary association, whether a universitas or not, it can only be fair, and accordance with law, that the right of members to recall an elected executive committee at a properly constituted special or annual general meeting, must be implied. To view it any differently, would be untenable and can produce absurd results. The dictum of Herbstein J in the *Cape Indian Congress'* case at p 597, is in my view apposite in this instance:

> To hold that the members of an elected committee, in which is included the officials, have an indefeasible right of continuity of office for the period for which they have been elected, may lead to absurd results. The treasurer might embezzle the funds of the association, the secretary fail or neglect to carry out his duties, some members may not attend meetings, so that the necessary quorum is never obtainable; the committee as a whole might conduct a policy, not only in conflict with the wishes of members, but one harmful to the association and in conflict with its objects. Is there to be no remedy available to the members except resignation by them from the association? In my opinion the answer is in the negative and the basis for this answer is to be found in the legal relationship between the members as a whole and the committee.

Granje J then looked at the constitution of the association in question and concluded as follows:

> The constitution in question does no more than fix a period for which a committee or stipulated period in its context, means nothing more than their period of office will automatically come to an end at the expiry of that period, provided it is not terminated earlier at a proper meeting.
>
> The evidence in this matter further clearly demonstrates that the majority of the members of the SWD have lost confidence in Cronje as president and the executive committee he chairs ... I am satisfied that the members at the AGM were entitled to remove the members of the elected executive committee before its three-year term expired.

[42] The well-reasoned judgment of Granje J has equal application in our jurisdiction for it accords well with the provisions of ss. 47 and 94 of the Interpretation Acts 1948 and 1967 and the principles established by case law. It is my considered view that in the absence of an express term in the constitution of a registered society, the executive committee or its members do not have an indefeasible right of continuity of office for the period for which they have been elected. Where the majority members of

A a registered society have lost confidence in the executive committee, or for that matter any member of that committee, during a period for which they have been elected, the executive committee or any of its members may be removed before the expiry of the term by a vote of the members of the electing body at a properly convened meeting.

B [43] In the present case, the CEC is elected for a term of four (4) years and the constitution is silent on the powers of the CC to remove and/or re-elect the office bearers who constitute the CEC. In such circumstance, is the society powerless to do anything to the composition of the CEC once it is elected for a four (4) year term, even when the said committee has become totally dysfunctional and is unable to promote the C objects of the society? I think not. The CEC's term of four (4) years as fixed by rule 5A.9 of the constitution, means nothing more than that the committee's period of office will automatically come to an end at the expiry of the period, provided that it is not terminated earlier at a proper meeting of the electing body. The period of office stipulated in the constitution does not afford security of tenure to the members of CEC.

D [44] It is evident that the plaintiff has lost the confidence of a majority of the members of the CC and the CEC. As a result of the lack of confidence, meetings of both these committees, called by the plaintiff could not be held for lack of quorum. Now, in the circumstance, if the court were to accept the plaintiffs contrary contention, then it would lead E to a complete paralysis of the organisation. This cannot be the intention of the framers of the constitution, nor the intended purpose of its members.

[93] In *Cheah Phee Guan v. Persatuan Sok Tong Cheah Si Seh Tek Tong Hock Haw Kong Kongsi* Penang High Court OS 24NCVC-1190-10-2013 F (unreported), I had occasion to deal with a situation where there were no clear rules permitting the general body to remove trustees of the Kongsi. In that case, I said:

> 59. I now turn to the submission and interpretation made by counsel for the Plaintiffs in respect of rule 6 of the Rules.
>
> G 60. In my view, if the interpretation of the Plaintiffs is to be accepted then that would mean that other than the situations contemplated by Rule 6, under no circumstances can a trustee be removed by the general body of members at an annual general meeting or at an EGM.
>
> H 61. Although it is clear that there is no specific rule pertaining to removal of a trustee in the rules of the Cheah Kongsi, I take the view that that is not necessarily fatal as a term could be implied into the rules as a matter of necessity or reasonableness or by reason of business efficacy such that the rules are construed so as to give the general body of members the power to remove a trustee for I misconduct.

62. Support for such an approach is to be found in *BROOM'S LEGAL MAXIMS*, 10th ed. pg. 361 at 362 which reads as, "A liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of parties". A

63. Most certainly, if the members of the Cheah Kongsi were asked whether or not they have or should have the power to remove a trustee for misconduct, they would respond with a resounding answer in the affirmative. It is just that in this case, the Rules of the Cheah Kongsi does not expressly say that the general body of members have that power. B

64. But in this regard, it is almost universally understood and accepted that ultimate power is in the hands of the general body of members. Hence, the interpretation that I have placed on the Rules of the Cheah Kongsi as a whole is that the members do have the power to remove a trustee for misconduct. C

65. And the approach that I have taken is to my mind in accordance with what the members would have intended had they addressed their minds on this topic at the material time when the Rules were drafted. D

66. In that sense I am not in any way re-writing the Rules of the Cheah Kongsi but merely interpreting it in such a way as to construe it liberally so that the intention of the parties involved are carried into affect. E

67. Thus, in the present case, I am of the view that the general body of members were acting pursuant to powers granted by virtue of an implied term that they had the right to remove a trustee for misconduct is not of a trivial nature. F

[94] In my view, the legal basis on which a term may be implied into the Rules or constitution of a society is no different from the test that is applicable when considering whether a term should be implied to an ordinary contract. The test for implying a term are the business efficacy test and the officious bystander test. After all, the relationship between a society and its members is contractual in nature. Thus the Rules or constitution or by-laws constitute the contract and these are to be construed in accordance with the laws of contract. G

[95] Here, I would state that it is entirely consonant with business efficacy to imply a term in the Rules of Dong Zong that the supreme body ie, the EGM may deal with and resolve the leadership crisis by conducting a re-election of the committee members which as a collective body would in turn appoint the office bearers of the Dong Zong. Indeed, based on the present circumstances, the affairs and operations and the very existence of the Dong Zong will not just be compromised but will be obliterated, if a term is not implied. In my view, a term may also be implied on the basis of the H I

officious bystander test as the members of Dong Zong, if asked, would undoubtedly agree that there should be such a term to allow the EGM to resolve the leadership crisis.

[96] In this regard, I have also considered the decision by the Singapore Court of Appeal in *Foo Jong Peng v. Phua Kiah Mai* [2012] SGCA p. 55 ("*Foo*'s case") where the business efficacy test and officious bystander test were both considered. *Foo*'s case also involved the issue of whether a term should be implied that the management committee of a society should have power to expel an office bearer, *albeit* that there were express terms relating to removal of office bearers. In that case, the Singapore Court of Appeal rejected the principles of interpretation enunciated by the Privy Council in *Attorney General of Belize v. Belize Telecom Ltd* [2009] 2 All ER 1127; [2009] 1 WLR 1988; [2009] UKPC 10 ("*Belize* case"), where the Privy Council conflated the approach towards interpretation of a contract with the test for implying a term.

[97] In the *Belize* case, Lord Hoffman posited that:

> the implication of a term is an exercise in the construction of the instrument as a whole is not only a matter of logic.

[98] He reformulated the test for implied terms in the following terms:

> It follows that in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express word what the instrument, read against the relevant background, would reasonably be understood to mean.

[99] In *Foo*'s case, the Singapore Court of Appeal ultimately rejected the attempt for a term to be implied. In case, there was an express clause which dealt with expulsion and in those circumstances the court opined that it would be impermissible to imply a term to give the management committee power to remove an office bearer other than pursuant to the express terms as stipulated in the Rules of the society. The Singapore Court of Appeal's opinion as why a term should not be implied may be gathered from the following passages of the judgment:

> 46. While it is conceivable that a change in leadership may sometimes be desirable, we did not think that it was necessary for leadership change to be effected through a blunt power of removal wielded exclusively by the Management Committee, instead of through sensible compromise and consensus.
>
> 47. Further, the power of removal was not, in our view, so obvious that it would go without saying that such a term ought to be implied under the 'officious bystander' test. The Rules include specific governing the removal of trustees and expulsion of members for misconduct (see rules 14 and 19, respectively) and therefore contemplate the possibility that individuals with certain positions of responsibility or members may need to be removed in the interests

> of the Association. It is thus difficult to believe that the members did not advert themselves to the possibility of removal of office bearers or did not expressly say so because they had considered it so obvious that it would go without saying. We also do not think that the members would have considered it obvious that the Management Committee itself should have free rein to remove an office bearer. The members could have preferred the power of removal to be vested in the general meeting or for the power to be exercised only when stringent voting margins or procedural pre-conditions are met; alternatively, as the judge observed, the members could equally have intended that this apparent 'gap' in the Rules should mean precisely that office bearers cannot be removed and must be allowed to serve out their complete two-year term of office in order to ensure stability and continuity in the management of the Association.

[100] Here, the Dong Zong Rules are totally silent on expulsion of a member of the CC, CEC or office bearer. Hence, if the officious bystander were asked, whether a term should be implied to permit the EGM as the supreme body to resolve the leadership crisis and to conduct a re-election due to the exceptional circumstances which have bedevilled the Dong Zong for the past several months, more so in light of possible de-registration, I have no doubts that the response would be, "Oh, Of course!".

[101] I now turn to the complaint that by obtaining the *ex parte* order, Dl's constitutional rights have been infringed. I was quite attracted to the argument initially but on reflection, I came to the conclusion that whatever may have been the implication of the *ex parte* order to D1, following *RIH Services Sdn Bhd v. Tanjung Tuan Hotel Sdn Bhd* [2002] 3 CLJ 83; [2002] 3 MLJ p. 1, it was entirely open to D1 to have set it aside immediately after service of the order on him on 1 August 2015. D1 took no steps to set aside the *ex parte* order and instead proceeded to file an affidavit in response to the OS and the injunction and only on 19 August 2015 filed the O. 52 leave application. In my view, if D1 truly felt that his constitutional rights had been infringed then the surest thing to do would be to set aside the *ex parte* order which he claims was a fetter on his constitutional rights. On this score, it should also be noted that D1 has not filed any counterclaim in the OS which he could have done, but has chosen not to do so.

[102] In my view, there is no basis for the complaint that the plaintiffs are guilty of subterfuge. They obtained a *quia timet* injunction on an *ex parte* basis which is the only way to do it. Given Dl's propensity to injunct meetings (whether rightly or wrongly) the plaintiffs herein cannot be faulted for proceeding on an *ex parte* basis. In any event, once the *ex parte* order was served, all cards were on the table and D1 could have taken immediate steps to set it aside, so that he could make whatever application he wanted to injunct the EGM which is to be held on 23 August 2015, which according to the plaintiffs has the support of at least ten Member States.

A **[103]** As for the complaint that the plaintiffs are guilty of "forum shopping" and that this OS should have been filed in the Appellate and Special Powers Division, I think that this has no merit. Indeed, even Dl's own legal action, that is, OS 87, was filed in the Civil Division and was heard by YA Justice Vazeer Alam.

B **[104]** Here the plaintiffs had valid reasons not to move the court in OS44 as they would have had to intervene and made themselves as parties, in circumstances where their complaint or cause of action had no relation to the cause of action subsisting in OS 44. Hence, the plaintiffs may have failed in their attempt at seeking immediate remedy in that court. Further if they C intervened, then a *quia timet* on an *ex parte* basis would have been a distinct impossibility as events would have overtaken the plaintiffs.

[105] In this regard, I have not glossed over the point taken by D1, that Poh could have moved the courts in the other proceedings to seek a *quia timet* injunction or to vary the injunction orders dated 1 June or 26 June 2015, so D as to preserve the Dong Zong from the dire consequences that flow from the s. 16(1) notice that was apparently brought to YA Justice Asmabi's attention when counsel appeared before her on 29 July 2015.

[106] Here, counsel for the plaintiff said that the notification to the judge in the other case was by way of information and that the s. 16(1) notice was E not the basis on which those other actions were filed. In my view, the fact that Poh and/or others who are parties to OS 35 and/or OS 44 could have taken steps in both proceedings is not a bar to the plaintiffs taking action by way of the instant OS.

F **[107]** The other point that was raised by counsel for D1 is that the ROS notice dated 6 August 2015 cannot be relied upon by the plaintiffs as the OS was filed on the basis of the s. 16(1) notice dated 30 July 2015. In my view, the OS is predicated on a set of circumstances to support a *quia timet* injunction and the ROS notice dated 6 August 2015 is part of the continuing G process of the steps that were taken by ROS under the Act. The ROS notice dated 6 August 2015 is germane to the OS *albeit* that it came after the OS was filed.

[108] Based on all the facts and circumstances discussed above, it is clear to me that D1 is vehemently opposed to the holding of the EGM on H 23 August 2015. If the orders sought in the OS and encl. 5 are not granted then it is a virtual certainty that the EGM will be scuttled through an injunctive order that D1 may obtain. By the time the injunction is set aside, it will be too late as the damage would have been done by then and Dong Zong cannot be resurrected. The first casualty will be those students who are I due to sit for the UEC in October 2015. They will be innocent victims of the internal tussle within Dong Zong. The threat of damage to Dong Zong is therefore real, substantial and imminent and warrants the grant of a *quia timet* injuction as a perpetual relief as prayed for in encl. 1.

[109] I note that the plaintiffs have abandoned prayer 3 of the OS. The OS is now confined only to prayer 1, which is the *quia timet* injunction. As I mentioned earlier, there is a public interest element to these proceedings in the form of the UEC. This coupled with the prospect of de-registration by ROS, makes it all the more imperative and urgent that prayer 1 of the OS be allowed. As such, the prayer sought in encl. 5 is also allowed although it has merged with prayer 1 of the OS. D1 is also ordered to pay costs of RM10,000 to the plaintiffs.

A

B

C

D

E

F

G

H

I